

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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IN RE: : Case No. 1:17-md-2804  
:  
**NATIONAL PRESCRIPTION** : *(Pages 1 - 27)*  
**OPIATE LITIGATION** :  
:  
**THIS DOCUMENT RELATES TO:** : *September 23, 2024*  
: *11:11 a.m.*  
*City of Rochester v. Purdue* :  
*Pharma, L.P.,* :  
*No. 19-op-45853 (Track 12)* :  
-----X

*(Held via Zoom videoconference)*

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

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1 MORNING SESSION, Monday, September 23, 2024  
2 (Proceedings commenced at 11:11 a.m.)  
3 - - -

4 THE COURT: All right. Good morning,  
5 everyone. Thanks for getting available.

11:11:17 6 This is a status call in MDL Number 2804 with the PEC  
7 and at two PBMs.

8 Thank you for the status reports, which I've read  
9 carefully. I appreciate everyone's hard work focusing on  
10 Webb County to determine if it makes sense to continue with  
11 that case as a bellwether.

12 These are my thoughts. I don't know at the end of the  
13 day whether there are any significant documents that have  
14 been destroyed that haven't -- that can't be found  
15 elsewhere. And it's going to be some time and a whole lot  
11:12:08 of time and money down the road whether we know that.

16 And the PBMs are convinced that there are important  
17 documents that are missing and can't be located elsewhere.

18 This was one of their -- this was one of their cases.  
19 So I'm starting from the premise that they're not trying to  
11:12:38 20 tank Webb County. I mean, they -- you know, the PBMs picked  
21 Webb County as a bellwether. So unless something unusual  
22 has happened in the other -- the rest of the discovery, I  
23 don't know why they'd want to tank that case. I assume they  
24 really believe that there are important documents that  
11:12:58 25 they'll not be able to find.

1 I don't think it makes sense to keep devoting a lot of  
2 resources to Webb County, and so my strong feeling is to  
3 ditch it.

4 And this is my suggestion. We have one other  
11:13:17 5 bellwether that was the plaintiffs' pick, so we need a  
6 defendants' pick. So my suggestion is first that the PEC --  
7 I know you've looked at this already, but -- to double-check  
8 and then certify which of the remaining original PBM cases  
9 won't have any document retention destruction issues. And  
11:13:45 10 then out of that list, PBMs pick two. The only condition  
11 will be, they need to be from circuits other than the Second  
12 because the remaining bellwether is in the Second Circuit,  
13 Rochester, New York.

14 So the PBMs pick two, and then the plaintiffs strike  
11:14:06 15 one. So we'll have one defendants' pick along with  
16 Independence, and we'll -- with Rochester, and we'll go  
17 forward with two. And the parties will quickly come up with  
18 a CMO and start up with that one.

19 So I just think -- this is the most effective way to  
11:14:29 20 go and not waste a lot of time and money, and move forward.

21 And the idea is that throughout the discovery process,  
22 the parties may learn enough to be able to settle this, come  
23 up with a global settlement. But if not, we'll try a couple  
24 of cases, some other judges will try a couple of cases, and  
11:14:51 25 we'll see how they shake out.

1           So, you know, I've got some very smart lawyers  
2 attending, so I'd like to hear from everyone on what you  
3 think.

4                       MR. WEINBERGER: Judge, this is  
11:15:04 5 Peter Weinberger on behalf of the PEC.

6           I appreciate your analysis and your thoughts very  
7 much.

8           Here's our concern. You know, I think you -- while  
9 you expressed concerns the last time about the bellwethers,  
11:15:24 10 you also said that, you know, document retention issues  
11 are -- it's never perfect. There's always going to be some  
12 problems. And I am very concerned about coming away from  
13 this hearing with your solution that you suggested with the  
14 precedent that has been set.

11:15:49 15           So David Ackerman and James Hannaway are my colleagues  
16 who have -- are really into the weeds, and, you know, as you  
17 saw from the deposition, they're the ones that prepared the  
18 witness and the 30(b)(6) witness and attended.

19           And I have to tell you that, you know, when you --  
11:16:15 20 when the defense talks about 100 boxes of documents, I think  
21 if you sorted -- if one sorted through those hundred boxes  
22 to try to come up with analysis as to whether or not this is  
23 really significant to their defenses, I think you would find  
24 in the final analysis that it is not and wouldn't be.

11:16:44 25           And for no other reason but the fact that for really



1 relevant years, from 2010 to the present, the department --  
2 the documents from these departments whose boxes of hard  
3 copy documents were destroyed, are in existence. And as the  
4 Court well knows, while the epidemic began to occur in 2002  
11:17:16 5 and ran through 2008 and '9, the peak of the epidemic was  
6 really in 2011 and 2012.

7 And as the Court will recall, this phase of the  
8 importance of prescription opioid pills being diverted, you  
9 know, causing the epidemic, then transitioned into the fact  
11:17:40 10 that people were transitioning from prescription opioid  
11 pills to street drugs because the cost of street drugs was  
12 so much less.

13 Here's my point. My point is that while there are  
14 documents that don't exist for some three or four years  
11:17:59 15 prior to 2010, the documents that -- and assuming that these  
16 departments have relevant documents, the documents that do  
17 exist give the defendants the full opportunity to use what  
18 they think might be relevant for their defenses.

19 And, you know, there has been a lot of work that's  
11:18:23 20 been put in. You know, there's still a lot of documents  
21 that have to be produced. And I just want the record to  
22 reflect, Your Honor, that we are not concerned that this  
23 defense pick is problematic. You know, we believe that at  
24 the end of the day, the defense is going to have what they  
11:18:48 25 need in terms of relevant documents.

1           You know, having been the trial lawyer on a couple of  
2           the cases, I just want to reiterate that, you know, I  
3           haven't seen the defendants use these kinds of documents to  
4           any great extent in the defense of their cases, and indeed,  
11:19:10 5           there are -- were many occasions when you found, for  
6           example, arrest records not to be relevant to a particular  
7           defense, either from the plaintiffs' perspective or from the  
8           defense perspective.

9           So, you know, I appreciate your analysis, and, you  
11:19:30 10           know, we're prepared to follow your lead. But at the same  
11           time, we -- I want you to know on behalf of the PEC and  
12           counsel who represent Webb County that, you know, we're  
13           prepared to run the risk because we don't think the risk is  
14           very great, and we're prepared for this defense pick to go  
11:19:52 15           forward. And so, you know, that's our position.

16           I appreciate the opportunity, Your Honor.

17           THE COURT: All right. Thanks, Pete.

18           And, you know, well, what are the -- you know, I  
19           assume the defendants are -- you know, your position is we  
11:20:12 20           should not go forward with Webb County. But I guess --

21           I mean, I think Pete's captured it correctly. The  
22           issue is, you know, there may be documents, you know, 2007,  
23           '8 and '9 that aren't there and can't be retrieved. It's  
24           hard to imagine someone winning or losing this case based on  
11:20:38 25           a 2007 document unless it's some unbelievable smoking gun,

1 and it would likely be for the plaintiffs.

2 I'm trying to think what could be really critical from  
3 2007/2008 that the defendants would want and how you would  
4 use it.

11:20:59 5 MR. BOONE: Your Honor, this is  
6 Jonathan Cooper for the Express Scripts defendants.

7 THE COURT: Yes, Jonathan.

8 MR. BOONE: A few things to say about this.

9 So first of all, my understanding -- and my colleague  
11:21:11 10 Anthony Alden is on as well, and he took the deposition and  
11 can jump in if I get any of the details wrong.

12 But my understanding is the destruction, first of all,  
13 was not limited to documents from just those years, and more  
14 fundamentally, the plaintiff doesn't know what documents  
11:21:26 15 were destroyed. At the deposition, the deponent testified  
16 repeatedly he couldn't confirm what was destroyed. We have  
17 certain logs of what was systematically shredded. But the  
18 deponent wasn't able to confirm what was in those boxes, and  
19 also testified that there could have been documents  
11:21:45 20 destroyed that weren't covered by any logs.

21 So the concern from our perspective is we don't know  
22 what was destroyed. We have a sense of some things  
23 destroyed, but it's certainly not the entire universe.

24 And, you know, to address Mr. Weinberger's concern,  
11:22:03 25 our approach to this has never been that the litigation hold

1 had to be perfect. Our position was, you had to have a  
2 litigation hold. That's a basic duty that the plaintiffs  
3 breached and breached for six years. That is not a minor  
4 slipup. You know, it's one thing if there's a litigation  
11:22:21 5 hold in place, and, you know, a particular document gets  
6 destroyed inadvertently, a particular person is not added to  
7 do the hold. Minor things like that, we wouldn't be here.  
8 This is about six years of failing to comply with one of the  
9 most basic duties of a lawyer, and the systematic shredding  
11:22:36 10 of documents, the contents of which we don't know.

11 So, you know, to Your Honor's point, we didn't take  
12 this decision lightly. And we discussed it, I can tell you,  
13 very significantly internally about whether we wanted to  
14 proceed with the case despite all of these issues. And our  
11:22:52 15 concern is that given all the things we don't know about  
16 what's been destroyed, it's not going to be a viable  
17 bellwether that can stand as a representative for the other  
18 cases. And so to Your Honor's point, I think our view is,  
19 yes, we believe Webb should not remain a bellwether.

11:23:12 20 I wanted to note also that -- Your Honor suggested  
21 picking ultimately one additional bellwether. I can tell  
22 you from my client's perspective, our view is that it would  
23 make sense to ultimately end up with three additional  
24 bellwethers, go back to four, the way it was at the start.  
11:23:29 25 I don't know if that's the view of everyone, but that is our

1 client's view. We could certainly start, I think, with the  
2 approach, Your Honor, laid out. But we think it would  
3 probably make sense to get back up to four.

4 MR. ACKERMAN: Your Honor, this is

11:23:45 5 David Ackerman for the PEC, if I may respond.

6 I think this statement that they don't know what was  
7 destroyed is a little bit of hyperbole given the deposition  
8 testimony. Because what the deposition testimony  
9 established, first of all, with respect to emails and  
11:24:06 10 electronic documents, was that is nothing was destroyed, was  
11 that the county had backup tapes dating back to 1999, that  
12 as a result of a technology change in 2017, old email  
13 accounts weren't deleted, and so information had been  
14 migrated and was available, and, in fact, we provided  
11:24:30 15 defendants with a pretty significant list of almost 100  
16 people for whom emails were available.

17 So what we're talking about here are hard copies, and  
18 what the county has are what are called disposition logs.  
19 And these are logs from the county's record management  
11:24:48 20 center that reflect requests to shred because the retention  
21 period for certain documents had expired. And each of those  
22 logs lists the box, and the boxes have labels on them. And  
23 so the only way to say we don't know what's in the boxes is  
24 to proceed from an assumption that the labels on the boxes  
11:25:08 25 were somehow incorrect, which is quite a leap to make.

1 And when the witness says he doesn't know what's in  
2 the boxes, he was admitting he didn't look in the boxes  
3 before they were shredded because they had been shredded a  
4 couple of years ago. But he knew what the content -- what  
11:25:27 5 the content labels of the boxes said. And a number of the  
6 content labels of the boxes indicate that those boxes had  
7 purely irrelevant material.

8 The disposition logs -- and when defendants complain  
9 about hundreds of boxes, they are including in that count  
11:25:41 10 cash reports for the county's golf course, boxes that  
11 included invoices for Time Warner and Verizon, boxes that  
12 were labeled kitchen invoice, boxes regarding programs to  
13 assist residents with their payment of their utility bills,  
14 check requests, and files for individuals who were denied  
11:26:04 15 treatment by the public health department. None of that's  
16 going to come up in trial.

17 And, in fact, you know, one of the things that was  
18 particularly striking to us is that there is an agency of  
19 the county called the Community Action Agency. And in  
11:26:26 20 defendants' submission, they refer to "client files relating  
21 to referrals for health-related issues." But that's not  
22 what these documents are at all. The Community Action  
23 Agency is this agency that helps county residents who are  
24 having trouble paying their water or their electric bill.

11:26:46 25 And what the witness testified was that those programs

1 that this Community Action Agency runs don't relate to  
2 healthcare, that the Community Action Agency doesn't ask  
3 questions about healthcare treatment in its intake process,  
4 and that the Community Action Agency maybe makes one to two  
11:27:04 5 referrals related to health concerns. And that only happens  
6 when somebody volunteers in an initial interview that they  
7 might need help in that respect. And the person couldn't  
8 remember any such referrals related to opioids.

9 But if there's any doubt about these Community Action  
11:27:23 10 Agency files, you know, the parties are still producing  
11 documents in this action. We'll go back and pull more  
12 recent Community Action Agency files and produce them, and  
13 they can see whether they're going to use them.

14 And we, as Mr. Weinberger said, we are willing to take  
11:27:40 15 that risk because we don't think there's much of one. That  
16 the defendants are not going to at trial be putting out  
17 files from people who come to the county because they need  
18 help paying their water bill. It's just not a relevant  
19 record.

11:27:54 20 You know, the remaining documents -- and we went  
21 through this in our status report, Your Honor. I don't know  
22 how much detail you want me to go into, but we believe the  
23 remaining documents have analogues. They have backups. And  
24 when you're talking about sheriff's case reports, the  
11:28:09 25 defendants will have ten years of case reports to work from

1 from 2010 forward.

2 When you're talking about the county's indigent health  
3 program, the testimony is that that health program had a  
4 computer system from 2005. And so relevant information from  
11:28:28 5 the case files was input into that computer system beginning  
6 in 2005. And then in 2019, they started imaging the actual  
7 documents.

8 Now, the case files that are in these disposition logs  
9 relate only to 2019. So there's -- you know, it was a --  
11:28:47 10 they started -- the program started imaging files in  
11 February of 2019. So there's an 11th, 12th chance for each  
12 of those documents -- or each of those boxes that the  
13 documents already exist in the county's computer files.

14 You know, I can go on, Your Honor, but in summary --

11:29:06 15 THE COURT: Well, look, I -- as I said, I  
16 think there's a small chance that anything -- anything --  
17 that anything was destroyed that can't be, you know,  
18 obtained in some other way that would prejudice either of  
19 the defendants. But the problem is, they think -- their  
11:29:33 20 concerned about it, we're going to spend a whole lot of time  
21 and money over this, and there was no litigation hold put  
22 in -- all right -- on.

23 And so I just -- since we have only one other  
24 bellwether, the defendants are entitled to have one, to have  
11:29:49 25 a bellwether that defendants are going to say right off the



1 bat, well, we're not going to credit, why do it?

2 I don't think we have the time or money to go with  
3 four. But I don't want to just have one. So I think we  
4 should go ahead and get a Second one. And I just want the  
11:30:09 5 plaintiff to certify that a litigation was put in -- a  
6 litigation was put in place timely, all right?

7 As defendants said, no litigation hold is perfect.  
8 There're always going to be slipups, okay, but if you didn't  
9 have one, you didn't have one. And that's why we've had to  
11:30:30 10 spend all this time on Webb County because there wasn't one  
11 in place.

12 So I think we should do this.

13 So how long will it take for the plaintiffs to go  
14 through the remaining original PBM cases?

11:30:48 15 My recollection, there was a total of about 80. We  
16 obviously have gotten -- so we're talking roughly 75 cases,  
17 and simply certify whether a timely litigation hold was put  
18 in place, you know, shortly after the case was filed,  
19 whenever that was.

11:31:07 20 How long will that take?

21 MR. WEINBERGER: Your Honor, this is  
22 Pete Weinberger again.

23 I would think that if you give us about two weeks.

24 THE COURT: Okay. That's fine.

11:31:19 25 So we'll just make it two weeks from today, which

1 would be October 7th. So let's just say 4:00 p.m.,  
2 October 7th.

3 All right. Then the defendants will jointly pick two.  
4 I mean, I don't care, you know, if each of you pick one, you  
11:31:49 5 jointly pick two, you figure it out. You come up with two  
6 out of those, however many there are. And the only  
7 criterion is, they should both be circuits other than the  
8 Second. So we'll end up with two different circuits.

9 So you tell me -- you're going to get the list on the  
11:32:10 10 7th.

11 How long do you want to pick your two?

12 MR. BOONE: Your Honor, this is Brian Boone  
13 for OptumRx.

14 I think two weeks after that would suffice.

11:32:25 15 THE COURT: Okay, Brian. So that would make  
16 it 10-21 at 4:00 p.m.

17 And then the plaintiffs will strike one of the two. I  
18 would think one week would be sufficient for that.

19 Don't you agree, Pete?

11:32:40 20 MR. WEINBERGER: Yes, Your Honor.

21 THE COURT: All right. We'll make it 10-28 at  
22 4:00 p.m. Plaintiffs will strike one, and so we'll be left  
23 with bellwether Number 2.

24 And then I would think in two weeks the parties should  
11:32:54 25 be able to propose a joint CMO. I mean, you don't have to

1 reinvent the wheel. You should simply, I think, follow the  
2 one you used for Rochester. I mean, I don't think there  
3 should be any real deviations, but I'll give two weeks to  
4 come up with that.

11:33:13 5 So that would be November 11th. But that's a federal  
6 holiday. So we'll just make it November 12th at 4:00 p.m.  
7 File a joint CMO, and then you can start up with that one.

8 Okay. The last thing I want to know, I assume -- so  
9 there was some merits -- obviously, there's been a lot of  
11:33:55 10 merits discovery on Rochester and maybe a little on Webb.

11 Has either side uncovered anything significant,  
12 shedding light on what I always felt was the most important  
13 allegation the plaintiffs made?

14 Plaintiffs have alleged that the two PBMs work very  
11:34:19 15 closely with Purdue and the other manufacturers in  
16 aggressively marketing these prescription opioids. That was  
17 their claim.

18 I'd like to know, you know, have you learned much, you  
19 know, that sheds any light on whether the plaintiffs are  
11:34:36 20 correct with that allegation?

21 MR. BOONE: This is Brian Boone again from  
22 OptumRx.

23 There is no evidence showing that, period.

24 THE COURT: Well --

11:34:51 25 MR. WEINBERGER: Sorry for my reaction, but --

1 THE COURT: All right. Well --

2 MR. WEINBERGER: -- that's just not --

3 THE COURT: I just want to know what you -- if  
4 you've learned any -- I mean, maybe you've not even gotten  
11:35:01 5 that far, all right? I don't know. But to me, that was the  
6 most significant allegation in the plaintiffs' complaint.

7 Yes, there're allegations about the PBMs as mail-order  
8 pharmacies, that you didn't have the -- you know, a good red  
9 flag program. But I'm not even -- you know, to me, the  
11:35:20 10 heart of this case, I think, is the allegation that the PBMs  
11 worked closely with the manufacturers in aggressively  
12 marketing these prescription opioids as being safe and  
13 effective for long-term pain, which was the heart of the  
14 case against the manufacturers.

11:35:39 15 So I just want to know if anyone's learned much on  
16 that. It may be premature. I'm just curious.

17 MR. WEINBERGER: It's a bit premature,  
18 Your Honor, but I can assure you that we are -- we are  
19 actively pursuing discovery in that regard. And we have  
11:36:00 20 documents that reflect that divisions, or companies that  
21 were purchased by the PBMs, were actively involved as early  
22 as 2001 and 2002 in assisting or in preparing programs to  
23 assist Purdue in educating doctors using the same claims  
24 about OxyContin, and about opioids in general, i.e., that  
11:36:34 25 they're rarely addictive, that they're effective, that you

1 can use them at increasing levels of milligram of dosage,  
2 and that any patient who feels like a smaller dosage is not  
3 effective can be given a larger dosage, and that that's not  
4 addiction, that's called pseudoaddiction.

11:37:02 5 The documents exist. We haven't yet --

6 THE COURT: All right.

7 MR. WEINBERGER: -- taken any depositions of  
8 either -- of anyone, frankly, let alone Purdue people or  
9 individuals involved with these defendants --

11:37:18 10 THE COURT: Okay.

11 MR. WEINBERGER: -- to determine the extent  
12 and nature, but --

13 THE COURT: All right. Well, as I said, I  
14 want -- I want everyone to keep their eyes open on this and  
11:37:33 15 consider the possibility of coming up with some resolution.

16 I mean, my guess is, all right -- I mean, remember, we  
17 started out with this stark -- you know, starkly diametric  
18 thing. The plaintiffs saying the PBMs were terrible. The  
19 PBMs saying not only aren't we defendants, we should be  
11:37:54 20 plaintiffs.

21 So my guess is, the truth is somewhere in the middle,  
22 as it has been with all the other defendants in this  
23 constellation of cases.

24 So just keep your eyes open while you're pounding away  
11:38:11 25 as to the -- as the end game, so . . .

1           And if you ever want my help, or Special Master  
2           Cohen's help, or Michael Borden's help, let us know.

3           All right. I think we've covered what we need to  
4           cover.

11:38:29 5           And anything else anyone wants to raise?

6                       MR. COOPER: Your Honor, this is  
7           Jonathan Cooper for Express Scripts.

8                       THE COURT: Yes.

9                       MR. COOPER: I have two housekeeping items.

11:38:40 10           THE COURT: Okay.

11                      MR. COOPER: One is that the parties jointly  
12           submitted, I believe on Friday, a stipulation to extend by  
13           two weeks the deadline to answer the complaint in Rochester.  
14           And that was a joint submission by the parties unopposed.

11:38:54 15           So we'd be grateful if Your Honor would enter that  
16           when you have time.

17                      THE COURT: All right. Yeah. We'll do that.

18                      So when is the current answer deadline, Jonathan?

19                      MR. COOPER: It would have been today.

20                      THE COURT: Oh. All right.

21                      MR. COOPER: Yeah.

22                      THE COURT: All right. All right. So it can  
23           be extended two weeks, which would make it --

24                      MR. WEINBERGER: I think the stipulation,  
11:39:19 25           Your Honor, says October 7th.

1 Jonathan, am I correct about that?

2 MR. COOPER: I believe that's correct. Two  
3 weeks from today.

4 THE COURT: All right. All right. That's  
11:39:28 5 granted. So we'll grant that.

6 MR. COOPER: Thank you, Your Honor.

7 And then the second housekeeping item is that on  
8 Friday evening we received letters from the PEC, both on  
9 behalf of the Government plaintiffs and the third-party  
11:39:41 10 payor plaintiffs, in response to letters we sent about  
11 plaintiff fact sheets. And there are two separate issues  
12 here that I just want Your Honor to be aware of.

13 The first is, the TPP plaintiffs are refusing to  
14 provide fact sheets to the PBMs for plaintiffs who are  
11:39:59 15 seeking leave to amend against the PBMs. They're just  
16 categorically refusing to give us those plaintiff fact  
17 sheets without an order from Your Honor.

18 And so, we can tee that up as a motion if we need to.  
19 That's something that we're concerned about.

11:40:13 20 MR. WEINBERGER: Let me make a suggestion,  
21 Your Honor.

22 First of all, the TPP lawyers are not on this call.

23 THE COURT: Yeah, they're not on the call,  
24 so . . .

11:40:22 25 MR. WEINBERGER: And, yes. And as to the

1 subdivisions, Your Honor, I, on behalf of the PEC and the  
2 subdivisions, sent a letter to counsel for the defendants  
3 with respect to the PFS issues.

4 I would suggest that this is probably a matter that,  
11:40:41 5 number one, we should talk about.

6 And secondly, that we should probably address with  
7 Special Master Cohen.

8 THE COURT: Yeah. Let's do that.

9 And why don't you discuss it and address it with  
11:40:56 10 Special Master Cohen. And if it requires a court order,  
11 I'll issue one. And, obviously, someone needs to talk to  
12 the TPP lawyers. I mean, if they --

13 MR. WEINBERGER: I'll take care of that,  
14 Your Honor.

11:41:10 15 THE COURT: I mean, if they -- I mean -- I  
16 mean, first, I haven't granted -- you know, there may be --  
17 you know, the whole issue about amending complaints, I --  
18 you know, we have proposed amended complaints, but I haven't  
19 granted any. But certainly, anyone -- if I would allow  
11:41:30 20 someone to add a defendant, they would have to, you know, do  
21 the fact sheet. So I'm just not sure of the timing of it.

22 MR. WEINBERGER: Well, that's exactly our  
23 point, Your Honor, without arguing it too much in front of  
24 you. You know, we think that this is the cart before the  
11:41:45 25 horse, and that --



1 THE COURT: Yeah. I might not even -- I mean,  
2 I haven't granted anyone's leave to amend a complaint to add  
3 anyone, all right?

4 I mean, at the end of the day, I'll have to make a  
11:41:58 5 decision if there's, you know, opposition from the  
6 defendants to being added, I'll have to -- you know, I'll  
7 have to weigh all the factors. I haven't granted any -- you  
8 know, I haven't permitted any amendments to be made. I've  
9 let people file the proposed amended complaints so everyone  
11:42:19 10 could see, all right, this is what the plaintiffs want to do  
11 and who they want to add, and so the defendants could, if  
12 they want to, oppose it. I'll have to decide it.

13 So if there's --

14 MR. WEINBERGER: Right, and --

11:42:31 15 THE COURT: I mean, if someone's not added,  
16 there's no reason to have a plaintiff's fact sheet because  
17 they're not in the case. So that may be the reason they're  
18 opposing it. But anyway --

19 MR. WEINBERGER: It is, Your Honor, primarily  
11:42:45 20 the reason. But as I said --

21 THE COURT: All right.

22 MR. WEINBERGER: -- I think we should --

23 THE COURT: All right. I think that makes  
24 sense.

11:42:53 25 Okay. Anything else, since we've got all these great

1 lawyers? I'm not inviting new issues, but we're all  
2 together.

3 SPECIAL MASTER COHEN: Judge, just a reminder  
4 that you may want to set our next meeting.

11:43:10 5 THE COURT: Oh, right, which I forgot to the  
6 last time.

7 Thank you, David.

8 Well, you know, I'm thinking, why don't we do it  
9 toward the latter part of December -- roughly -- November.  
11:43:32 10 Roughly 60 days. That seems -- 60 days' interval to check  
11 in seems to me to be a good course.

12 So --

13 LAW CLERK: Judge, 60 days from today puts us  
14 on Friday, November 22nd.

11:44:25 15 THE COURT: Yeah. I'm thinking either Friday  
16 the 22nd or Monday the 25th.

17 MR. WEINBERGER: I think that is the Monday of  
18 Thanksgiving.

19 THE COURT: Yeah.

11:44:35 20 So we want to do it Friday, November 22nd? That seems  
21 to be okay with me.

22 How's 11:00 a.m.? For anyone on the West Coast, that  
23 makes it reasonable.

24 Unless 11:00 a.m., Friday, November 22nd, is a big  
11:45:06 25 problem, well, we can do it then.

1 MR. BOONE: This is Brian Boone from OptumRx.  
2 That works for us, Your Honor.

3 THE COURT: Okay. Thanks, Brian.

4 Okay. So it will be Friday, November 22nd, 11:00 a.m.

11:45:27 5 And then, why don't we just say joint status reports,  
6 noon -- or each side's status reports, noon on the 20th,  
7 Wednesday, the 20th. Because that helps me -- considerable  
8 help to me to prepare.

9 Okay. Thanks, everyone.

11:45:52 10 And anyone in the Jewish religion, happy and healthy  
11 New Year to all of you.

12 MR. WEINBERGER: Same to you, Your Honor.

13 Thank you.

14 THE COURT: Thank you.

11:46:06 15 MR. BOONE: Thank you, Judge.

16 THE COURT: Okay. Bye-bye.

17 (Proceedings concluded at 11:46 a.m.)

18

19 **C E R T I F I C A T E**

20

21 I certify that the foregoing is a correct transcript  
22 from the record of proceedings in the above-entitled matter.

23

24 /s/ Donnalee Cotone 23rd of September, 2024  
25 DONNALEE COTONE, RMR, CRR, CRC DATE  
Realtime Systems Administrator